

Appl. No. : **09/710,690**
Filed : **December 10, 2000**

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 21-23 and 25-36 stand rejected under 35 USC 102b as allegedly being anticipated by Rothman. In response, the claims are amended herein to obviate this rejection.

Initially, note that Rothman is not itself prior art. The contents of the provisional 60/208521 which led to Rothman is prior art. Accordingly, according to MPEP 901.04, Rothman is only effective as prior art date "for subject matter that is disclosed in the provisional application". Hence, all references to Rothman given herein actually refer to the provisional 60/208521.

A number of changes are also made to the claims in order to clarify, as per the patent office's recent guidelines for computer-based inventions, that the subject matter is statutory, since it defines actions that are carried out on a programmed computer.

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Claim 21 is also amended to include the subject matter from page 19 of the original specification that recites that inventory is characterized as to whether it is based on returned items. This adds a new nuance to the inventory determination, that is not shown by Rothman.

Specifically, Rothman does teach returns. Even , but does not teach making any kind of distinction between the inventory that is original and the inventory that is based on a return.

In many scenarios, it may not be possible to resell a returned item as if it was new. At the very least, the returns need to be examined to be sure that they are sellable. Accordingly, claim 21 has been amended to specify categorizing inventory as to whether the inventory is from sales or whether it is from returns. This allows finding more information about the genesis of the material in the inventory. This is not shown or otherwise suggested by the cited prior art. Claim 21 should therefore be allowable thereover along with the claims that depend there from.

Claim 34 has been amended in a similar way, and should be allowable for similar reasons.

Claims 26 and 31 have been amended to specify the "unique identifying number" embodiment, described at the top of page 14 of the specification.

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Specifically, these claims have been amended to recite that the management system notifies the retailer that the consumer will pick up the item and provides the retailer with a copy of the request and the unique identifying number. This allows users to place orders over the Internet for example, and get a unique identifying number that they can use to pick up the order. As explained page 14, lines 8-10 this can be used "to verify that the correct consumer is receiving the product when the consumer personally picks up the product". Such is nowhere disclosed or suggested by the cited prior art, and hence this claim should be additionally allowable.

Claims 29, 30, 37 and 38 are amended herein to include additional limitations from the disclosure on page 18, which refers to the product trends being carried out at a local level. As described previously, applicant respectfully traverses the contention that sales tracked for commission anticipates this tracking of product trends.

The patent office must take the broadest reasonable interpretation of the claims that is consistent with the specification, and as it would be understood by one having ordinary skill in the art. [*Phillips v. AWH Corp.* 363 F.3d 1207, (Fed. Cir. 2005, *en banc*) "The Patent and Trademark Office ('PTO') determines the scope of claims in patent applications not solely on the basis of the claim

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language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art”]

According to the *Phillips* case, the patent office must consider how terms would be understood by those having ordinary skill in the art reading the specification. Certainly one having ordinary skill in the art would not believe that monitoring information for commission compensation purposes was the same as determining product trends based on geography or demographics. Those having ordinary skill in the art would understand that these are two are wholly different. In any case, the claims are amended to clarify this subject matter and make it even more clearly patentable.

Therefore, these claims should be additionally allowable.

For all of these reasons, it is respectfully suggested that all of the claims should be in condition for allowance. A formal notice of allowance is hence respectfully requested.

If the Examiner believes that communications such as a telephone interview or email would facilitate disposal of this case, the undersigned respectfully encourages the Examiner to contact the undersigned.

Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this

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application by electronic mail (using the email address harris@schiplaw.com). I understand that a copy of these communications will be made of record in the application file.

Please charge any fees due in connection with this response, (other than those concurrently paid via EFS), to Deposit Account No. 50-4376, small entity.

Respectfully submitted,

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